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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1x and Decision 01-09-060	Rulemaking 02-01-011

COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY ON THE PROPOSED DECISION OF ALJ PULSIFER REGARDING PETITION FILED BY PACIFIC GAS AND ELECTRIC COMPANY

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April 19, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1x and Decision 01-09-060	Rulemaking 02-01-011

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Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) files this reply to the March 30, 2007, Proposed Decision of ALJ Pulsifer (PD) entitled *Opinion Regarding Petition for Modification of Decision 06-07-030 filed by Pacific Gas and Electric Company*. San Diego Gas & Electric Company joins in the portion of these comments addressing the tracking of negative indifference amounts.

PG&E supports the PD's determination that "Table 3C" attached to D.06-07-030 is illustrative, at least with respect to PG&E.

The PD addresses two other issues, as well. The first is whether the DWR power charge applicable to some departing load customers responsible for the DWR power charge, up through June 30, 2006, is the same as DWR power charge applicable to non-exempt direct access customers during the same time period. The PD determines that this is not the case, that the Commission has yet to establish the DWR power charge applicable to some non-exempt departing load for the period prior to June 30, 2006. PG&E respectfully submits that the same DWR power charge should be applicable to all non-exempt non-bundled customers for the

period prior to June 30, 2006, and that these charges have already been established by prior Commission decisions, and requests that the PD be modified accordingly.

The second issue is whether "negative indifference amounts" should be tracked for a utility once that utility's "CRS undercollection" has been reduced to zero. The PD determines that they should. PG&E respectfully submits that the better approach, the one consistent with the *Working Group Report* that was developed as a part of this proceeding, is for no tracking to occur once a utility's CRS undercollection has been eliminated, and requests that the PD be modified accordingly.

I. THE PD SHOULD BE MODIFIED SO THAT THE SAME DWR POWER CHARGES ARE APPLICABLE TO ALL NON-EXEMPT NON-BUNDLED LOAD, INCLUDING CUSTOMERS UNDER SCHEDULE E-NWDL AS WELL AS DIRECT ACCESS LOAD, FOR THE PERIOD PRIOR TO JUNE 30, 2006

The PD addresses the pre-June 30, 2006, DWR power charge rates to be paid by some categories of non-exempt municipal departing load customers, including those served under PG&E's proposed schedule E-NWDL. (PD, pp. 5-6.)

A. The PD Would Inappropriately Allow For Retrospective Adjustment of Pre-June 30, 2006 DWR Power Charge Rates For Some Departing Load

The PD acknowledges that previous Commission decisions have adopted the DWR power charge rates applicable to other subgroups of non-bundled customers, including split wheeling departing load (SDL). (*See*, PD, p. 7.) Further, the PD concedes that the rates were not made "subject to refund" when they were adopted. (PD. P. 8.) That is the typical ratemaking treatment. Rates are adopted on a prospective basis, and then modified from time to time as appropriate, also on a prospective basis. Otherwise, customers can never be certain what their utility cost is. The adopted rate today might be changed, on a retrospective basis, tomorrow.

Nonetheless, the PD concludes that in its earlier decisions the Commission meant to make the adopted DWR power charge rates subject to retrospective adjustment later. (PD, pp. 8-9.) That conclusion is illogical and unreasonable, and should be removed from the final decision. The more reasoned conclusion, and the conclusion more consistent with the Commission's previous decisions, which did not adopt rates subject to later retrospective adjustment, is that the already adopted rates for the period prior to June 30, 2006, were not intended to be adjusted retrospectively. There is simply no logic for readjusting those rates on a retrospective basis now, in mid-2007.

B. There Is No Basis For The Distinction The PD Would Allow Between Different Non-Bundled Customers Responsible For The Costs Of DWR Power

The approach recommended by PG&E treats all customers fairly. Under it, all non-bundled customers who have been determined to be responsible for the DWR power charge pay the same rate. The DWR power charge rates to be paid by direct access customers are clearly settled, and not subject to retrospective adjustment at this point. PG&E is proposing that other non-exempt non-bundled customers pay those same rates.

If, as would be the case under the PD, some categories of non-bundled customers will now have separately determined rates for DWR power during the pre-June 30, 2006, time period, those rates will almost certainly be different from the rates paid by direct access customers.

There is no reasoned basis for such a distinction. As the Commission stated in D.06-07-030 in connection with the determination of the DWR power charge going forward from June 30, 2006, a determination involving the calculation of an "indifference amount,"

> Our treatment here is also consistent with D.03-07-028 which indicated that to avoid cost shifting, MDL customers bear responsibility for a fair share of costs necessary to achieve bundled customer indifference. To apply this indifference standard properly, however, *MDL customers must be treated in a manner consistent with that of DA and customer generation DL customers* regarding the total portfolio indifference calculation. The treatment we adopt here achieves this consistency. (D.06-07-030, p. 37 (emphasis added; footnote omitted).)

This statement is just as true for the DWR power charges applicable to the period prior to June 30, 2006. Just as is the case with respect to post-June 30, 2006, DWR power charge rates, departing load customers responsible for the costs of DWR power should be treated consistently with each other, and with direct access customers. This will not happen if the PD is allowed to stand, so that the previously adopted pre-June 30, 2006, DWR power charges (which have already been applied to direct access customers and SDL) are modified on a retrospective basis for some non-exempt departing load customers.

C. The Limited Respective Adjustment Allowed In D.06-07-030 Was Tailored To Accommodate The "Working Group" Negotiations, And Does Not Justify The PD's Proposed Treatment Of Pre-June 30, 2006, DWR Power Charges

The PD attempts to support its extraordinary decision to retrospectively adjust pre-June 30, 2006, DWR power charge rates for some departing load customers by noting that D.06-07-030 did retrospectively adjust DWR power charge rates for two months, between July 1, 2006, and August 31, 2006. (PD, p. 10.) This unusual treatment was discussed in detail in D.06-07-030, and it was applied to preserve a settlement agreement between the utilities and direct access customer representatives.

The utilities, direct access customer representatives, the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) reached an agreement, submitted to the Commission several months prior to June 30, 2006, that DWR power charges should change on June 30, 2006. The Commission was not able to act on the settlement until well after June 30, 2006, but it preserved the settlement by ordering not only prospective changes to the DWR power charge beginning September 1, 2006, but also a retrospective adjustment for June and July of 2006. (*See*, D.06-07-030, pp. 25-26.)

The PD erroneously concludes that therefore, pre-June 30, 2006, DWR power charges for NWDL and SDL should be retrospectively adjusted in some unspecified way, as well. It supports this conclusion with the statement that "[c]onsistency thus requires that a similar principle apply to MDL customers with respect to avoiding any overcollections of CRS." (PD, p. 10.)

PG&E agrees that customers should be treated consistently. But that consistent treatment is to apply the same DWR power charge to all non-exempt non-bundled load. Retrospectively resetting the DWR power charge applicable to some departing load, as the PD would do, so that the DWR power charge applicable to these departing load customers is different than the DWR power charge applied to direct access customers, would be to treat customers inconsistently.

D. PG&E's Proposal Does Not Result In Overcollection Of DWR Power Charges From The Various Categories Of Non-Bundled Customers, Either As a Whole Or Relative To Each Other

The PD appears to be concerned that PG&E "could significantly overcollect CRS funds" unless it provides for a retrospective adjustment to pre-June 30, 2006, DWR power charges applicable to NWDL. (PD, p. 10.) This is not the case. All non-bundled DWR power charges are remitted to DWR. DWR maintains utility specific balancing accounts so that the amount

collected from each utility, across time, is the required amount, neither more nor less.

Nor is there any overcollection from these departing load customers relative to other non-bundled customers. Under PG&E's proposal the same DWR power charge is applicable to all of the non-exempt non-bundled customers. No customer group receives a separate refund, either. The DWR power charge drops to zero on July 1, 2006, for all.

By paying the same DWR power charge rates, as PG&E proposes should be the case, all non-exempt non-bundled customers are treated equally. It is the PD that would allow for unequal treatment, by potentially applying different DWR power charges to direct access, on the one hand, and NWDL, on the other, for the pre-June 30, 2006, period.

Finally, on page 12 the PD states "it is now apparent that CRS undercollections were not at zero as of June 30, 2006 for all non-bundled customer categories subject to a DWR Power Charge." PG&E disagrees. The total PG&E undercollection for both DWR power charge and DWR bond charge was deemed to be zero as of June 30, 2006. This same date should apply to all categories of non-bundled customers responsible for the costs of DWR power.

In sum, the PD should be modified to provide that all non-exempt, non-bundled load, including NWDL, pay the same, already adopted DWR power charge for the pre-June 30, 2006, time period. That approach treats all non-bundled load equally, and therefore fairly.

II. THE PD SHOULD BE MODIFIED SO THAT INDIFFERENCE AMOUNTS ARE TRACKED FOR A UTILITY ONLY UNTIL THAT UTILITY'S CRS UNDERCOLLECTION IS ELIMINATED

PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) jointly petitioned the Commission to clarify that D.06-07-030 intended for any "indifference amounts" for a utility to be tracked only until such time as that utility's CRS undercollection was eliminated. (PD, p. 15 (the PD refers to PG&E, but correctly notes on page 16 that this aspect of PG&E's petition was supported by SDG&E and SCE, as well).)

PG&E, SDG&E, and SCE noted that their request was consistent with the recommendation of the "DA Agreement Parties" set forth in the *Working Group Report* submitted prior to the issuance of D.06-07-030. The utilities discussed at length in their petition for modification that the *Working Group Report* intended to track negative indifference only so long as there was an undercollection, and will not repeat all of those arguments here.

The PD disagrees with this interpretation, stating on p. 20 that

> It was with this view towards future periods beyond September 30, 2006, and continuing until expiration of the DWR contracts, that D.06-07-030 stated:
>
> > However any accumulated negative indifference amount shall continue to be tracked and applied to any future positive indifference amounts that may accrue in later years of the applicability of the DA CRS. This approach is consistent with D. 05-12-045, which permits a negative ongoing CTC to offset a subsequent positive ongoing CTC." (D.06-07-030, p. 17.)

However, this language is from the *Working Group Report*, and this use is a misinterpretation of the intent of the settling parties. This language was not originally written in reference to future periods, through expiration of the DWR contracts. It was meant only to apply to SCE while SCE had an undercollection. The original use of this phrase can be found on p. 80 of the *Working Group Report*:

- The parties agree the CTC figure adopted in PG&E's ERRA proceeding will be used in conjunction with the Indifference Rate calculation such that the DWR Power Charge component of DA CRS for DA customers not exempt from that charge will be the residual of the Indifference Rate less the CTC. They further agree that the DWR Power Charge component of DA CRS may be a negative number in those instances in which the CTC is larger than the Indifference Rate, so that overall indifference is maintained. *The parties also agree that, once the DA CRS undercollection balance is fully paid off, in no event will the overall Indifference Rate be permitted to be a negative number. Further, negative amounts will not be carried forward to a future year.* The specific steps required and agreed to for reconciliation of the CTC and the Indifference Rate are set forth in Section III.

- The parties also agree that in the event the statutory approach to CTC calculation is also adopted for SCE, that such CTC figure for SCE will be used in the Indifference Rate calculation in the same manner as for PG&E, with the following exception: In the event the benchmark in a given year exceeds the level of a utility's total portfolio power cost for that year, and to the extent there remains a DA CRS undercollection balance for such utility, the negative Indifference Rate shall be reflected in calculating the accruals to the undercollection balance for such year. In no event shall such a negative Indifference Rate result in any net payment to customers who have left utility service. *However, any accumulated negative indifference amount shall continue to be tracked, and shall be applied to any future positive indifference amounts that may accrue in later years of the applicability of the DA CRS.* (*Working Group Report*, p. 80 (emphasis added).)

Nothing in D.06-07-030 suggests an intent to diverge from the *Working Group Report.* To the contrary, D.06-07-030 wholly adopts the settling parties' position

> We conclude that parties' proposed treatment of negative indifference charges is reasonable and hereby adopt it. Once the existing CRS undercollection is eliminated, the indifference charge for non-exempt DA customers shall *not be* permitted to decrease below zero, and no negative balance should be carried forward. (*See*, D.06-07-030, p. 17 (emphasis in original).)

The DA Agreement Parties did not intend for indifference to be tracked once the undercollection was recovered. To the extent that the Commission wishes to adopt the original settlement agreed to by the DA Agreement Parties, negative indifference should not be tracked once the undercollection recovered.

Tracking negative indifference amounts and using them to offset indifference costs in the future does not make sense. Under such an approach, if the indifference amount is positive in the future, but is nonetheless eliminated or offset by previous negative indifference amounts, then the departing load charges applied at that time will not accurately reflect the additional burden that load departure will place on PG&E's then-existing bundled customers. The artificially reduced indifference amount used to set rates will understate the burden that would be placed on bundled customers by any new departures.

PG&E continues to urge the Commission to adopt the approach agreed to by the DA Agreement Parties and recommended in the *Working Group Report*, and so proposes that the PD be modified to provide that any negative indifference amount for a utility is tracked only until the utility's CRS undercollection is eliminated.

Respectfully Submitted,

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April 19, 2007

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, California 94105.

On the 19th day of April, 2007, I served a true copy of:

COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY ON THE PROPOSED DECISION OF ALJ PULSIFER REGARDING PETITION FILED BY PACIFIC GAS AND ELECTRIC COMPANY

by electronic mail to all parties to R.02-01-011 providing an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 19th day of April, 2007.

/s/
MARTIE L. WAY

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA; ELECTRONIC SERVICE LIST

R0201011

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